MONTANA LEGISLATIVE HISTORY

Chapter 114 19 95

Bill H 285 S _____ Original bill & history X C

H. Committee on BUSINESS & LABOR

Hearing Date(s) & EXEC ACTION 1/25 X C

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on FISH & GAME

Hearing Date(s) & EXEC ACTION 2/7 X C

_____ C

_____ C

_____ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

	TRANSMITTED TO SENATE		
2/03	FIRST READING		
2/03	REFERRED TO STATE ADMINISTRATION		
2/28	HEARING		
3/01	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	43	0
3/06	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/07	SIGNED BY SPEAKER		
3/08	SIGNED BY PRESIDENT		
3/09	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 135		
	EFFECTIVE DATE: 10/01/95		

HB 285 INTRODUCED BY LARSON, ET AL.

EXEMPT CERTAIN EMPLOYEES OF A LICENSED OUTFITTER FROM COVERAGE UNDER THE STATE OVERTIME LAW

1/19	INTRODUCED		
1/19	FIRST READING		
1/19	REFERRED TO BUSINESS & LABOR		
1/20	FISCAL NOTE REQUESTED		
1/25	HEARING		
1/26	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
1/28	2ND READING PASSED	96	2
1/30	3RD READING PASSED	95	2
	TRANSMITTED TO SENATE		
1/31	FIRST READING		
1/31	REFERRED TO FISH & GAME		
2/07	HEARING		
2/08	COMMITTEE REPORT—BILL CONCURRED		
3/02	2ND READING CONCURRED	49	0
3/03	3RD READING CONCURRED	46	3
	RETURNED TO HOUSE		
3/07	SIGNED BY SPEAKER		
3/09	SIGNED BY PRESIDENT		
3/09	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 114		
	EFFECTIVE DATE: 03/13/95		

HB 286 INTRODUCED BY PAVLOVICH, ET AL.

CLARIFY THAT IT IS AN UNLAWFUL ACT FOR ANY BREWER OR BEER IMPORTER TO COERCE OR PERSUADE A BEER WHOLESALER TO SET A PRICE FOR ANY PRODUCT

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO BUSINESS & LABOR		
1/26	HEARING		
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/30	2ND READING PASSED	97	1
1/31	3RD READING PASSED	95	1
	TRANSMITTED TO SENATE		
2/01	FIRST READING		
2/01	REFERRED TO BUSINESS & INDUSTRY		
3/08	HEARING		

3/09	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	39	0
3/13	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	93	5
4/04	3RD READING AMENDMENTS CONCURRED	92	7
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 409		
	EFFECTIVE DATE: 10/01/95		

HB 287 INTRODUCED BY REAM, ET AL.

PROVIDE THAT DEPARTMENT OF REVENUE IS A JUDGMENT LIEN CREDITOR

BY REQUEST OF THE DEPARTMENT OF REVENUE

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO TAXATION		
1/20	FISCAL NOTE REQUESTED		
1/23	SPONSOR FISCAL NOTE RECEIVED		
1/25	FISCAL NOTE PRINTED		
1/27	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/07	2ND READING PASSED	88	9
2/08	3RD READING PASSED	91	7
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO TAXATION		
3/08	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	22	15
3/13	3RD READING FAILED	24	25
3/14	RECONSIDERED PREVIOUS ACTION AND PLACED BACK ON 2ND READING	35	15
3/23	2ND READING CONCURRED AS AMENDED	50	0
3/24	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	88	8
4/03	3RD READING AMENDMENTS CONCURRED	94	5
4/05	SIGNED BY SPEAKER		
4/06	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 365		
	EFFECTIVE DATE: 04/12/95		

HB 288 INTRODUCED BY MARSHALL, ET AL.

PROVIDE THAT A PERSON WHO TAKES A MOUNTAIN SHEEP USING AN UNLIMITED MOUNTAIN SHEEP LICENSE, WITH THE EXCEPTION OF A MOUNTAIN SHEEP TAKEN PURSUANT TO AN ADULT EWE LICENSE, IS NOT ELIGIBLE TO RECEIVE ANOTHER SPECIAL LICENSE FOR THAT SPECIES FOR THE NEXT 7 YEARS

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO FISH & GAME		
1/31	HEARING		

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE -----
-- REREFERRED ---- DATE READ

HB0252	SQUIRES, CAROLYN		REQUIRE ENDORSEMENT TO INSTALL MEDICAL GAS PIPE				
	1/18	1/24		DO PASS	1/24	VOTE: 16-2	1/25
HB0255	QUILICI, JOE		PROHIBIT PSC RECEIVING FEES PRIOR TO FILING ANNUAL REPORT, SCHEDULE, SUPPLMT				
	1/18	1/24		TABLED ON	1/24	VOTE:17-1	
HB0257	ELLINGSON, JON		RESTRICT RENT INCREASES				
	1/18	1/25		TABLED ON	1/26	VOTE: 14-4	
HB0264	ELLIS, ALVIN		REVISE UNFAIR LABOR LAW TO EXCLUDE WAGE INCREASE IN EXPIRED AGREEMENT				
	1/18	1/24		DO PASS	1/25	VOTE: 11-7	1/26
HB0269	ELLINGSON, JON		CREATE MANUFACTURED HOUSING OMBUDSMAN				
	1/18	2/01		PASS AS AMENDED	2/13	VOTE: 10-8	2/15
HB0272	STOVALL, JAY		CLARIFYING TIP DEFINITION TO INCLUDE SERVICE CHARGE				
	1/18	2/01		PASS AS AMENDED	2/7	VOTE: 18-0	2/08
HB0276	KEENAN, BOB		EXEMPT CADDY FROM MINIMUM WAGE, OVERTIME, UI, WORK COMP AND CHILD LABOR LAWS				
	1/18	1/25		TABLED ON	1/26	VOTE:18-0	
HB0285	LARSON, DON		EXEMPT CERTAIN OUTFITTER EMPLOYEES FROM OVERTIME LAW				
	1/19	1/25		PASS AS AMENDED	1/25	VOTE: 18-0	1/26
HB0286	PAVLOVICH, BOB		CLARIFY PROHIBITION OF COERCIVE BEER PRICING				
	1/20	1/26		PASS AS AMENDED	1/27	VOTE: 18-0	1/28
HB0307	HARRINGTON, DAN		EXPRESS "TITLE ONLY" STATUTE FOR USED MOTOR VEHICLE DEALERS				
	1/21	1/27		PASS AS AMENDED	1/27	VOTE: 18-0	APPROPRIATIONS 1/28
HB0310	BARNETT, JOE		ALLOW REGULATED COMPANIES TO RECOVER IN THEIR RATES CONSUMER COUNCIL FEES				
	1/21	1/26		DO PASS	1/26	VOTE: 18-0	1/27
	GALVIN, PATRICK		REVISE OLD FUND LIABILITY TAX TO EXCLUDE EMPLOYERS AND EMPLOYEES UNDER FELA				

House BILL NO. 285

INTRODUCED BY Larson Abard Bradd Molnar Benedict HARP Ellett M. Hanson Trigit Anderson Gerber Hertel

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN EMPLOYEES OF A LICENSED OUTFITTER FROM COVERAGE UNDER THE STATE MINIMUM WAGE AND OVERTIME LAWS; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees of a nonprofit organization who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion, period wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association;

(n) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States ~~Secretary~~ secretary of ~~Transportation~~ transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu

of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours ~~per~~ a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0285, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act exempting certain employees of a licensed outfitter from coverage under the state minimum wage and overtime laws.

Assumptions:
1. It is assumed that there will be no impact to the state.
2. It could be assumed that wages will not fall below the minimums established by the state.

FISCAL IMPACT:
None.

Dave Lewis 1-26-95

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Don Larson

DON LARSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0285, as introduced

HB 285

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on January 25, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 257, HB 285, HB 276
Executive Action: HB 285, HB 147, HB 207, HB 242, HB 264,

HEARING ON HB 257

Opening Statement by Sponsor:

REP. JON ELLINGSON, HD 65, Missoula County said one of the qualities of this committee is the "show me attitude." This committee can't consider a new law until "you show me there is a

market value for the basis of establishing rent. **REP. ELLINGSON** said that is correct. **REP. MILLS** said problems would be solved by imposing the burden upon one class of people which is the landlords. There are federal programs and other state programs for assistance to those who need help that is accepted as a social requirement on all of the citizens. Why should this be a social requirement on one class of citizens? **REP. ELLINGSON** said the justification is the individuals who are involved directly in the creation of this problem.

CHAIRMAN SIMON said the city of Billings has been in a systematic program of replacement of sidewalks and gutters and curbs and other infrastructure which are needed in those areas, not by special improvement districts but by maintenance districts. As such, the people living in that area have no recourse to oppose it. If the city council determines a particular area is going to be done, they do the construction. If a person cannot pay for these improvements it is added to the taxes. This legislation would not allow for recovery of those kinds of costs that could be added to a property because it only allows for improvements to the dwelling unit. **REP. ELLINGSON** said in this regard the intent of the bill and the hope of the bill would be that there would be sufficient funds generated by the 5% increase to cover the increased costs which are reflected over the 12-year period of time.

Closing by Sponsor:

The sponsor closed.

HEARING ON HB 285

Opening Statement by Sponsor:

REP. DON LARSON, HD 58, Missoula County distributed amendments to the committee regarding this bill. He said when the bill was drafted there was a portion exempting the licensed outfitters coverage under the minimum wage. It was intended to exempt the outfitters from only the overtime laws. **EXHIBIT 11** Most all of the outfitters pay well over the minimum wage.

Proponents' Testimony:

SEN. STEVE BENEDICT said he was representing the outfitters in his area and Jack Rich, the past president of the Montana Outfitters and Guides. He said he had been going into the Bob Marshall Wilderness Area for 15 years. Their days begin early in the morning and it might be an hour to wrangle the horses in and getting gear set up for the day. It might be another amount of time before the guests are ready to go. It is really hard to quantify a day. The work is intermittent all day long. It is real important to give some latitude to people in this profession. Many of the hunting guides do outfitting for the

love of hunting.

Jean Johnson, Director, Montana Outfitters and Guides Association said this bill is asking the legislature to recognize the unique qualities of an outfitter's business and approve an exemption of outfitters employees from overtime laws. Employment for most guides and others who work for outfitters is generally defined by the season, whether it's hunting or fishing and last a relatively short period of time. Traditionally, outfitters pay their employees by the day, week or season, depending upon personal preference and how they have their seasons structured. It is probably safe to say that most guides in Montana are paid on an average of $350-$700 a week. **EXHIBIT 12**

Robin Cunningham, Executive Director, Fishing Outfitters Association said they concurred with this bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

TAPE 1, SIDE B

REP. DAVID EWER questioned the amount of money, including the tips, etc. He said he was concerned if people were treated fairly or not. **Ms. Johnson** said when there was someone hired to be with the clients they wanted the best possible relationship between them. It is that employee that will be the determination of whether that client will return next year. There is a partnership created between the employee and the outfitter. It is usually a lump sum of money which is agreed upon. Besides the guide and cook there is the camp tender and the livestock tender. In many cases those people, particularly the camp tender, wants to be there for the experience.

CHAIRMAN SIMON said he had worked as a fishing guide and said a person did not get hired for those kinds of positions unless a person is experienced being in that position. It would be logical that anybody that would be hired in that position would have a good idea what to expect as far as how long the day is going to be and what the requirements are going to be. **Ms. Johnson** said that was true.

Closing by Sponsor:

Sponsor closed.

REP. COCCHIARELLA asked if one of the criteria for getting an independent contractors exemption is proof of self employment. **Mr. Hunter** said yes.

Closing by Sponsor:

Sponsor closed.

EXECUTIVE ACTION ON HB 285

Motion: REP. LARSON MOVED HB 285 DO PASS. REP. LARSON MOVED THE AMENDMENTS.

Discussion:

REP. LARSON then explained the amendments.

Vote: Motion to adopt the amendments carried 18-0. Motion to DO PASS AS AMENDED for HB 285 passed 18-0.

EXECUTIVE ACTION ON HB 147

Motion: REP. JEANETTE MCKEE MOVED DO PASS ON HB 147. REP. MCKEE ALSO MOVED THE AMENDMENTS.

Discussion:

Steven Maly explained the McGee amendments. The first amendment addresses the concern which was raised about the ambiguity in the continuing education requirement. Rep. McGee seeks thorough this amendment to give guidance to the board as to what kind of continuing education is intended. It gives some direction to the board. The board has yet declared that it is going to require continuing education but if it does it gives them some guidance. In the second part the civil liability has been decreased from $5,000 to $1,000. The rest of the amendment has only to do with the procedures outlined in the penalty section. Amendment #6 changes the nature of the penalty section. A person is not going to be liable for both criminal and civil penalties.

CHAIRMAN SIMON said he had strong feelings about part of the amendments being proposed. Amendment 1 and 2 deal with the continuing education requirement and as such a 15 hour limit is around it. All the rest of the amendments pertain to the civil penalty section.

REP. JACK HERRON asked what period this would cover.

Steven Maly said there is no indication of that. Leave as much discretion to the board as wise but give them as much direction as he thought the committee and the rest of the legislature might require. It is open ended.

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 1-25-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chair, Maj.	X		
Rep. Bob Pavlovich, Vice Chair, Min.	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

EXHIBIT 12
DATE 1-25-95
HB 285

HB 285 Exempting certain employees of a licensed outfitter from overtime laws
Amendments proposed by the Montana Outfitters and Guides Assn.
Jan. 25, 1995

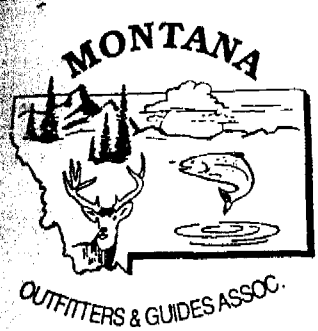
1. Title, line 5.
Following: "STATE"
Strike: "MINIMUM WAGE AND"
Strike: The plural of "LAWS"

2. Page 2, lines 11 and 12.
Strike: subsection (n) in its entirety

3. Page 4, line 23.
Insert: "(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101."

# # #

DATE 1-25-95
HB 285



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"Where respect for the resource and a quality experience for the client go hand in hand."

HB 285 Exempting certain employees of a licensed outfitter from overtime laws
Testimony by the Montana Outfitters and Guides Assn.
Jan. 25, 1995

Mr. Chairman, members of the committee: For the record, my name is Jean Johnson and I am the executive director of the Montana Outfitters and Guides Association, a position I've held for nearly four years.

This began as a simple bill and despite offering an amendment, it's still a simple bill. We are asking you to recognize the unique qualities of an outfitter's business and approve an expemption of outfitters' employees from overtime laws.

For years, outfitters have just assumed they've been exempt from having to pay overtime for the same reasons that agriculture is exempt. It's a reasonable assumption: many outfitters have their own livestock and quite a few even put up hay on their private land. A lot of outfitters are actually ranchers who have gone into outfitting as a means to keep the ranch together.

We found out the hard way that we're not exempt. Last year, an outfitter fired a guide and the guide retaliated with a bill for several thousand dollars in overtime.

Overtime is what normally occurs when an employee works more than eight hours in a day. But trying to fit an outfitter's employees into an eight-hour day isn't logical and it doesn't work. Anyone who has ever been in a hunting camp knows that the day starts early for cooks and stock tenders and it goes late. When the job is to serve the guests and the setting is a five-day back country pack trip, or a ten-day hunt in the Bob, or a cattle drive in southeast Montana, an eight-hour day just doesn't exist.

When the experience is tied to horses and wildlife, there's no clock. The guides, cook, camp tender and stock handler live with the guests 24 hours a day. It's certainly not all work — there's generally break time in mid-day and between groups — and most guides and other employees would probably say they do it for the pleasure. But. They are expected to be attentive to the purpose, and that's to serve the guest.

Employment for most guides and others who work for outfitters is generally defined by the season, whether it's hunting or fishing, and lasts a relatively short period of time. Traditionally, outfitters pay their employees by the day, week or season, depending upon personal preference and how they have their seasons structured. It's probably safe to say that most guides in Montana are paid on average $350 - $700 a week. I believe a very good back country cook can make $500 a week, although most probably average closer to $350. And, of course, they get board and room. A good cook will likely even have her own tent.

Our request is certainly a logical one and there is considerable precedent for allowing an overtime exemption, given the fact that our amendment would be codified as subsection (w). We hope you'll see the validity in HB 285 and give it a "do pass" recommendation.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business + Labor DATE 1-25-95

BILL NO. 285 SPONSOR(S) Rep Larson

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jean W. Johnson	MT Out Fitters & Guides	X	
ROBIN CUNNINGHAM	FISHING OUTFITTERS ASSN MT	✓	
STEVE BENEDICT	SENATE DIST 30	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE STANDING COMMITTEE REPORT

January 25, 1995

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 285** (first reading copy -- white) **do pass as amended.**

Signed: _____
Bruce Simon, Chair

And, that such amendments read:

1. Title, line 5.
Following: "STATE"
Strike: "MINIMUM WAGE AND"
Following: "OVERTIME"
Strike: "LAWS"
Insert: "LAW"

2. Page 2, lines 11 and 12.
Strike: subsection (n) in its entirety

3. Page 4, line 22.
Following: "services"
Insert: "(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101"

-END-

1/25

Committee Vote:
Yes 18, No 0.

211425SC.Hbk

CHAIRMAN--KEN MESAROS
SECRETARY-SERENA ANDREW
NORMAL SCHEDULE==> SITE: ROOM 402 DAYS: T,TH,S TIME: 3 P.M. OR ON ADJOURN

BILL NO	REFER DATE	HEARING DATE	TITLE/OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE	REREFERRED TO COMM	DATE READ
HB0062 HANSON, MARIAN	2/20	3/02	PROHIBIT USE OF RIFLES DURING SPRING WILD TURKEY HUNT	CONCUR 3/07/95		3/09
HB0122 RANEY, BOB	2/20	3/02	MAJORITY SUPPORT NEEDED TO DEVELOP PARK OR FISHING ACCESS SITE 3/21	TABLED ON 03/03		
HB0195 SWANSON, EMILY	2/20	3/09	IMPLEMENT RECOMMENDATIONS OF GOV'S ADVISORY COUNCIL ON PVT LAND/PUB WILDLIFE Discussed 3/16/95	CONCUR AS AMENDED 3/21/95		3/22
HB0196 SWANSON, EMILY	2/20	3/09	GENERALLY REVISE OUTFITTER & GUIDE LAW; CREATE PROFESSIONAL GUIDE LICENSE	CONCUR 3/16/95		3/17
HB0285 LARSON, DON	1/31	2/07	EXEMPT CERTAIN OUTFITTER EMPLOYEES FROM OVERTIME LAW	CONCUR 2/07/95		2/08
HB0288 MARSHALL, ROD	2/06	2/28	LIMIT PERSON WHO TAKES MOUNTAIN SHEEP TO 1 LICENSE IN 7 YEARS, IN SOME CASES	CONCUR 2/28/95		3/02
HB0291 FUCHS, DANIEL	2/07	2/28	ALLOW POSSESSION/SALE/PURCHASE OF BONES OF LEGAL ELK, ANTELOPE, MOOSE, DEER	CONCUR 2/28/95		3/02
HB0312 BRAINARD, MATT	2/04	3/02	PROVIDE VOTER REGISTRATION FORM WHEN APPLYING FOR HUNTING/FISHING LICENSE	TABLED ON 03/08		
HB0349 RANEY, BOB	3/24	3/27	CREATE THE FUTURE FISHERIES IMPROVEMENT PROGRAM	CONCUR AS AMENDED 3/27/95		3/28
HB0375 HARPER, HAL	2/20	3/07	PROHIBIT POSSESSION AND TRANSPORT OF CERTAIN LIVE FISH AWAY FROM POINT TAKEN	CONCUR 3/14/95		3/15
HB0384 REAM, BOB	2/20	3/07	REVISE LAWS ON MANAGEMENT AND HUNTING OF BLACK BEARS	CONCUR 3/14/95		3/15

HOUSE BILL NO. 285

INTRODUCED BY LARSON, HIBBARD, CURTISS, BENEDICT, MOLNAR, HARP, ELLIOTT, M. HANSON, TVEIT, ANDERSON, JENKINS, HERTEL

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN EMPLOYEES OF A LICENSED OUTFITTER FROM COVERAGE UNDER THE STATE ~~MINIMUM WAGE AND~~ OVERTIME ~~LAWS~~ LAW; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND WILL NOT BE REPRINTED. PLEASE REFER TO YELLOW COPY FOR COMPLETE TEXT.

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

HOUSE BILL NO. 285

INTRODUCED BY LARSON, HIBBARD, CURTISS, BENEDICT, MOLNAR, HARP, ELLIOTT, M. HANSON, TVEIT, ANDERSON, JENKINS, HERTEL

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, ~~and~~ cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees of a nonprofit organization who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion, period wages paid the learners may not be less than 50% of the minimum wage rate established

in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association~~;~~

~~(n) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101~~.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States ~~Secretary~~ secretary of ~~Transportation~~ transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in

selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours ~~per~~ a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(W) A PERSON EMPLOYED AS A GUIDE, COOK, CAMP TENDER, OR LIVESTOCK HANDLER BY A LICENSED OUTFITTER AS DEFINED IN 37-47-101."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

-END-

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN KEN MESAROS**, on February 7, 1995, at 1:00 p.m.

ROLL CALL

Members Present:
Sen. Kenneth "Ken" Mesaros, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Bruce D. Crippen (R)
Sen. William S. Crismore (R)
Sen. John R. Hertel (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Judy H. Jacobson (D)
Sen. Terry Klampe (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council
Serena Andrew, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 259, HB 285
Executive Action: SB 210

{Tape: 1; Side: A & B;}

HEARING ON SB 259

Opening Statement by Sponsor:

SENATOR DON HARGROVE, SD# 16, BOZEMAN, told the committee that SB 259 was a very simple bill allowing the use of an atlatl for a special two-day deer hunting season preceding the special archery season.

(Tape: 1; Side B)

Closing by Sponsor:

SENATOR HARGROVE said he felt the two-day atlatl season was important to highlight the intent of his bill. He had requested information from DFWP but hadn't received it prior to the hearing and had assumed all requirements for bowhunters would apply. The cost of putting one more line on a license should be negligible. The atlatl people were only asking for an opportunity to hunt with bowhunters and wanted to highlight the weapon for industrial purposes.

SENATOR HARGROVE commented that there is a display of atlatls at the Historical Society as well and at the Museum of the Rockies. Following the meeting, **Mr. Perkins** would provide a demonstration for anyone interested. The real reason for his bill was to promote tourism, a local industry that has an opportunity for expansion, and Montana's cultural heritage.

HEARING ON HB 285

Opening Statement by Sponsor:

REPRESENTATIVE DON LARSON, HD #58, SEELEY LAKE explained that his bill exempts certain employees of licensed outfitters from the overtime law. The House has already amended out the minimum wage portion of the bill.

Outfitter camps have very erratic hours. Because of their special circumstances, they have requested an exemption from overtime laws. Employees from other industries are exempt: agriculture, some medical practices, taxi drivers, etc.

Proponents' Testimony:

JEAN JOHNSON, Executive Director, Montana Outfitters & Guides Association (MOGA), told the committee this was a very simple and logical bill. It asks recognition of what a hunting camp is. When wildlife and livestock are involved, it's difficult to put the industry into an eight-hour timeframe. For years outfitters thought they had an agricultural exemption from overtime requirements. A year ago an outfitter fired a guide and that guide sued for overtime. This bill is an attempt to protect these small businesses.

A good guide can earn around $100/day; a good cook from $350-500/week. A day starts early for stock tenders and doesn't end until the guests go to bed; a good portion of the day is spent being hosts, not working.

Outfitters' business for the most part is governed by length of the hunting season; it is not year-round employment. Most people are guides because they like to do it. They are paid by the day,

by the week, or by the hunt.

There was no opposition to this bill in the House. Labor was there and didn't oppose it.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

SENATOR CRIPPEN commented that he had worked in an outfitter camp and never thought of anyone being paid overtime.

Closing by Sponsor:

REPRESENTATIVE LARSON said some fishing guides keep a party out until they catch a fish. These people are seasonal and their working day goes from daybreak to sunset. They rely on tips for a big part of their compensation.

EXECUTIVE ACTION ON HB 285

Motion: SENATOR BOB PIPINICH, SD #29, MISSOULA, MOVED HB 285 BE CONCURRED IN.

Vote: THE MOTION TO CONCUR IN HB 285 PASSED UNANIMOUSLY. SENATOR CRISMORE offered to carry the bill.

EXECUTIVE ACTION ON SB 210

SENATOR MESAROS said DFWP furnished some amendments to SB 210. **ANDREA MERRILL, Legislative Council Staff,** commented that she hadn't changed the DFWP amendments, but had added applicable sections of law.

Motion: SENATOR BISHOP MOVED THE AMENDMENTS.

Discussion: BOB LANE, DFWP, Chief Legal Counsel, explained the department's proposed amendments **(EXHIBIT #5)** as intended to clarify the bill.

SENATOR CRIPPEN asked if a fisherman can carry his spouse's license. **Mr. Lane** responded that anyone can carry a spouse's license or that of minor children.

Motion/Vote: THE MOTION TO PASS THE AMENDMENTS TO SB 210 CARRIED UNANIMOUSLY. SENATOR BISHOP MOVED THE BILL AS AMENDED.

Vote: THE MOTION TO PASS SB 210 AS AMENDED CARRIED UNANIMOUSLY.

INFORMATION ON REQUEST FOR COMMITTEE BILL

CHAIRMAN MESAROS said **Pat Graham, DFWP,** had responded to the

MONTANA SENATE
1995 LEGISLATURE
FISH AND GAME COMMITTEE

ROLL CALL DATE 2/07/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN			
WILLIAM CRISMORE	X		
JOHN HERTEL	X		
KEN MILLER	X		
MIKE SPRAGUE			
GARY FORRESTER	X		
JUDY JACOBSON	X		
TERRY KLAMPE	X	X late	
BOB PIPINICH	X		
AL BISHOP, VICE CHAIRMAN	X		
KEN MESAROS, CHAIRMAN	X		

SEN:1995
wp.rollcall.man
CS-09

DATE 2/07/95

SENATE COMMITTEE ON Fish & Game

BILLS BEING HEARD TODAY: SB 259

HB 285 Exec Action 210

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
DAVID BROWN	Montana Sawmillers Ass.	259		X
Rep. Tom Henry Burns	~~Rep. Tom Henry Burns~~	~~259~~	✓	
Troy Nehmich	Athlist	259	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

SENATE STANDING COMMITTEE REPORT

February 7, 1995

MR. PRESIDENT:
We, your committee on Fish and Game having had under consideration HB 285 (third reading copy -- blue), respectfully report that HB 285 be concurred in.

Signed: _____
Senator Ken Mesaros, Chair

Amd. Coord.
Sec. of Senate

Sen. Crismore
Senator Carrying Bill

321551SC.SRF

HOUSE BILL NO. 285

INTRODUCED BY LARSON, HIBBARD, CURTISS, BENEDICT, MOLNAR, HARP, ELLIOTT, M. HANSON, TVEIT, ANDERSON, JENKINS, HERTEL

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(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion, period wages paid the learners may not be less than 50% of the minimum wage rate established

in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

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3 advertising for a radio or television station employer;
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6 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
7 maximum workweek applicable to them under 39-3-405;
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9 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
10 basis and that are used exclusively for supply and storing of water for agricultural purposes;
11 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
12 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
13 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:
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19 employees are employed by the establishment;
20 (m) a driver employed by an employer engaged in the business of operating taxicabs;
21 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
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23 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
24 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
25 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
26 basis, at an annual rate of not less than $10,000;
27 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
28 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
29 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
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(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(W) A PERSON EMPLOYED AS A GUIDE, COOK, CAMP TENDER, OR LIVESTOCK HANDLER BY A LICENSED OUTFITTER AS DEFINED IN 37-47-101."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

-END-